

## Criminal Attempt Liability in Iowa

The following criminal offenses contain an attempt alternative:

<u>Code Section</u>	<u>Description of Offense</u>
2C.22	Attempt to Mislead the Citizens' Aide
22.6	Attempting to Violate any Provision of the Public Records Law
29A.101(1), (4); 29A.101A	Attempting to Evict Service Member During Active Duty
29C.18(2)	Attempting to Violate Emergency Management and Security Rule
39A.2(b)(3)	Election Misconduct 1 <sup>st</sup> Degree - attempt to vote more than once or when unqualified
39A.3(b)(5)	Election Misconduct 2 <sup>nd</sup> Degree - attempt to learn how voter marked ballot
39A.4(1)(a)(4)	Election Misconduct 3 <sup>rd</sup> Degree - attempting to interfere with voter
39A.5(1)(a)(3), (6)	Election Misconduct 4 <sup>th</sup> Degree - attempt to communicate counted election results before polls close; attempting to violate any other voting rule
67.6	Attempt to Exercise Functions of Public Office While Suspended
81.6(2)	Attempt to Alter DNA Sample
88A.10(2)	Attempt to Bribe the Amusement Ride Inspection Commissioner*
89A.17(2)	Attempt to Bribe an Elevator Inspector*
99D.11(7)	Attempt to Make Pari-mutuel Wager under age 21
99D.24(4)	Attempt to Affect Outcome of Pari-mutuel Race
99F.9(5)	Attempt to Make Wager at Gambling Facility under age 21
99F.15(4)(a), (b), (i)	Attempt to Affect Outcome of Gambling Game or Attempt to Claim Winnings when did not Place Wager
99G.36(1), (2)	Attempt to Defraud Lottery, Attempt to Commit Theft of Lottery Ticket, Attempt to Influence Winning of Prize
103.38	Attempt to File Invalid Electrician License**
123.47(2)	Attempt to Purchase Alcohol Under the Legal Age
123.99	Attempt to Procure Transportation of Illegal Liquor
124.101(7), 155A.3(8)	Delivery of controlled substance, delivery of imitation controlled substance, delivery of prescription drug - all include attempting to transfer

124.414(1)	Drug Paraphernalia includes items attempted to be used
135C.21(2)	Attempt to Impede Enforcement by Certain Health Care Agencies
144.52(3), (4)	Attempt to Falsely Use Record of Vital Statistics or Birth Certificate
147.84	Attempt to File False Diploma with Board of Public Health**
147A.11	Attempt to Convey False Information about Need for Ambulance
155A.24(6)	Attempt to Distribute Prescription Drugs Without Authenticating Matters Contained in Pedigree Documents
169.17	Attempt to File False Diploma with Ag. Dept. or Board of Veterinary Medicine**
169A.14	Attempt to Falsely Brand or Deface Brand on Animal
189A.17(1)	Attempted Distribution of Adulterated Meat or Poultry**
198.13(1)	Attempt to Prevent Secretary of Agriculture from Performing Duties under Commercial Feed Chapter
229A.5B(1)	Attempt by Sexually Violent Predator to Leave Custody, etc.
234.13(3)	Attempt to Fraudulently Use Food Stamps**
239B.14(1)	Attempt to Falsely Obtain Family Benefits**
321.79	Attempt to Operate Motor Vehicle to Commit Malicious Mischief, injury, or crime
321.216B, 321.216C	Person under 21 Using False ID in attempt to get alcohol or tobacco
321.260(1)(a)	Attempt to alter, etc. Traffic Control Device, Sign, etc.
321.279	Attempt to Elude Pursuing Law Enforcement Vehicle
321G.17	Attempt to Elude Peace Officer While on Snowmobile
321I.18	Attempt to Elude Peace Officer While on All-terrain Vehicle
422.25(8)	Attempt to Defeat or Evade Income Tax
423.40(3)	Attempt to Evade Sales or Use Tax
424.17	Attempt to Evade Environmental Protection Charge on Petroleum Diminution
437A.13(2)	Attempt to Evade Replacement Tax on Electricity and Natural Gas
450.53(3)	Attempt to Evade Estate or Gift Tax

453A.2(2)	Attempt to Purchase Tobacco Under Age 18
453A.50(1)	Attempt to Evade Tobacco Tax
455C.12	Attempt to Falsely Collect Can/Bottle Refund
462A.32	Attempt to Move Waterway Marker or Buoy
462A.34B	Attempt to Elude Law Enforcement Vessel
481A.38	Attempt to Take, Kill, Trap, etc., Game or Other Animal, except as authorized by law
481A.48	Attempt to Take Certain Game Birds or Animals, except as permitted by law
481A.58	Attempt to Capture or Take Game Bird with Trap, etc
481A.92(1)	Attempt to Use Colony Trap to Capture Any Game or Fur-bearing animal
481A.93(1)	Attempting to Hunt Bird or Animal While Using Artificial Light
481A.120	Attempt to Kill, Wound, or Pursue Animal from Aircraft or Snowmobile
481A.123	Attempt to Shoot Game or Fur-bearing Animal within 200 Feet of Building
481A.137(1)	Attempting to Take Game or Fur-bearing Animal While Abandoning Injured Animal
481A.144(4)	Attempt to Take Minnows for Commercial Purposes from Iowa Waterways
542B.25	Attempt to File False License with Board of Prof'l Engineers and Land Surveyors**
543C.5(3)	Attempt to Make Fictitious or Pretended Sales or Purchases of Subdivided Lands
543D.18A(1)	Attempt to Improperly Influence Real Estate Appraisal**
544A.15(3)(a)(3), (6)	Attempt to Falsely Use Architect's Certificate of Registration or Seal, or Attempt to Use Expired
663.20	Attempt to Elude the Service of a Writ
706A.2(1)(d)	Attempt to Violate Laws Concerning Specified Unlawful Activity Enterprises (Ongoing Criminal Conduct)
707.6A(2)(b)	Homicide by Vehicle - while attempting to elude law enforcement vehicle
707.7	Attempt to Intentionally Terminate a Pregnancy (Attempted Feticide)
707.8A(2)	Attempt to Perform Partial-birth Abortion

707.11	Attempt to Commit Murder
707C.4(1)	Attempt to Perform Human Reproductive Cloning
708.13	Attempt to Disarm a Peace Officer
708A.2	Attempt to Commit an Act of Terrorism
710.10(3)	Attempt to Entice a Minor Away
710.11	Attempt to Purchase or Sell an Individual to Another Person
711.2	Robbery (enhancement for attempting to inflict serious injury)
712.1(2)	Arson - causing fire/explosion while attempting to manufacture drugs
712.8	Attempt to Place Incendiary or Explosive Device
713.2	Attempted Burglary
714.7B	Attempt to Shield or Remove Theft Detection Device
714.8(15)	Theft Alternative - attempt to obtain property by deception
715A.8(2)	Identity Theft - Attempt to Fraudulently Use Identification Information of Another
716.7(2)(a)	Trespass - attempting to take deer on private land without permission
716A.1(13)	Email Crime - includes attempting to use a computer to do several things related to email crimes
718.4	Harassment of Public Officers and Employees - attempt to prevent public officer from performing duty
719.1	Interference with Official Acts (enhancement for attempt to inflict injury, attempt to inflict serious injury, and attempt to use dangerous weapon)
719.4	Escape - Attempt to Escape from Detention Facility
719.5	Permitting Prisoner to Escape - includes aiding attempted escape
720.6	Malicious Prosecution - attempt to cause another to be prosecuted
721.2(7)	Nonfelonious Misconduct in Office - attempt to coerce a public employee to make contribution
722.11(2)(a)	Attempt to Bribe Student Athlete
725.19(1)	Attempt to Make Gambling Wager under age 21'
728.12(1)	Sexual Exploitation of a Minor - attempt to cause minor to engage in sex act

730.4(2)(b)	Attempt to Administer Polygraph Examination to Employee or Candidate for Employment
732.2	Attempt to Carry Out a Contract for Boycott or Sympathy Strike

\* = Cross references to section 722.1, which is the general bribery statute and does not contain an attempt provision

\*\* = Violation of the statute constitutes a fraudulent practice under section 714.8

In addition to offenses containing an attempt alternative, the Code mentions criminal attempt in a manner that suggest there should be general attempt liability, including:

- Section 29B.77 establishes general attempt liability for attempted violation of the Iowa Code of Military Justice.
- Section 100.9 requires fire marshals to arrest and charge people who have attempted to commit arson, but the arson statute (712.1) does not criminalize attempted arson.
- Section 229A.2(10) defines “sexually violent offense” to include any offense involving an attempt to commit a sex crime, for purposes of the commitment of sexually violent predators. Section 682A.1(5)(h) includes a similar definition for those required to register as sex offenders.
- Section 232.57(2)(f) allows the State to forgo reasonable efforts before terminating parental rights when “the parent has been convicted of . . . attempting . . . the commission of the murder or voluntary manslaughter of another child of the parent.” Section 232.111(2)(a)(5) requires the county attorney to file a termination petition under the same circumstances.
- Section 719.7(4)(c) criminalizes failing to report the attempted violation of possessing or introducing contraband into a jail.
- Section 723A.1(3) includes the attempt to commit criminal acts in its definition of “pattern of gang activity.”

- Section 706.1(1)(a) provides that a person commits conspiracy when he “agrees with another that they or one or more of them will engage in conduct constituting . . . an attempt . . . to commit the crime.”
- Section 803.1(1)(b) grants criminal jurisdiction to Iowa courts if “Conduct of the person outside the state constitutes an attempt to commit an offense within this state.” This is almost the same language contained in the Model Penal Code’s jurisdictional statute. *See* Model Penal Code § 1.03. The Model Penal Code also contains a general attempt statute. *See id.* § 5.01.
- Section 804.7(1) permits a peace officer to make an arrest without a warrant if a crime is attempted in his presence. Section 804.9(1) contains a similar provision for arrests by private persons.
- Section 804.14 sets forth the proper manner for making an arrest, and states that a less formal method of arrest can be used to arrest a person who is engaged in the attempt to commit a public offense.
- Section 915.80(2) relating to Crime Victim Compensation includes in its definition of “crime” any conduct “attempted in this state . . . and is punishable as a felony or misdemeanor.”

It seems that almost all states have a general criminal attempt statute. With a few exceptions, these general statutes cover any attempt to commit a felony or misdemeanor. Ira P. Robbins, 26 Harv. J. Legis. 1, 10 (1989).

Some advocate a system in which there is no general attempt statute. In such a system, the substantive crime definitions provide for attempt liability. To support this proposition, one

scholar points to the Iowa system as well as the federal system, which likewise has not adopted a general attempt statute and has expressed reluctance to do so. For a discussion of this idea, see Paul R. Hoeber, *The Abandonment Defense to Criminal Attempt*, 74 Cal. L. Rev. 377, 393 n.61 (1986).

When the new Iowa Criminal Code was drafted, it purposely left out a general attempt provision, opting instead to define many criminal offenses in a manner that would include an attempt. For example, the definition of robbery in Iowa omits the theft element found in the common law definition. Therefore, a person committing an assault with intent to commit a theft is guilty of robbery regardless of whether property was actually taken. Under the common law definition, however, one would have to rely on an attempt statute to criminalize the same behavior. The same applies to arson, which is defined in Iowa as starting a fire near property with the intent that it burn, whether or not it actually does burn. Under the common law, an attempt statute was needed to hold accountable someone who started a fire with the intent to burn but no burning resulted. For a discussion of these principles, see Kermit L. Dunahoo, *The New Iowa Criminal Code*, 29 Drake L. Rev. 237, 325-328 (1979).

However, this rationale does not completely fit with many of the code provisions listed above. For example, section 804.7(1) allows police officers to make arrests without a warrant when a crime is committed *or attempted* in their presence—if the substantive definition of a committed offense includes attempt liability, the added language “or attempted” has no legal effect without a general attempt statute.